12 February 2024

My Lords,

As promised, I am writing to address the questions raised during the Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2024 debate in Grand Committee on Monday 18 December 2023. I am sorry for the delay in replying.

As was discussed the Higher-Risk Buildings (Keeping and Provision of Information etc.) Regulations set out technical requirements placed on accountable persons for occupied higher-risk buildings. The regulations specify the golden thread information that they need to keep for their building, the information they need to share with various people and certain exemptions to sharing this information. The regulations also make minor clarifying amendments to regulations made last year, the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 and the Higher Risk Buildings (Key Building Information) Regulations 2023.

Turning to the points raised in the debate which I promised I would respond to in writing.

**Electronic storage of the golden thread information**

Lord Stunell asked whether accountable persons would need to implement a specific electronic system for storing the golden thread of information and how the Government has ensured that information will be accessible in the future.

The Government is not mandating a specific electronic system for storing the golden thread of information as we consider that imposing a solution for the whole of industry would not be proportionate or efficient. It is important that individual accountable persons are able to decide the electronic solution that enables them to meet their obligations, ensures that the right people can access the right information when necessary, and works for their organisations and their buildings.

We do not expect that accountable people will necessarily use the same systems throughout the entirety of a building’s lifecycle, but they will need to ensure that their golden thread information is transferrable and accessible, without being altered or corrupted.

**Golden thread contents**

Lord Stunell, referring to the impact assessment for the Regulations, also asked for clarity on what the Government considers to be the irrelevant material that should not be stored as golden thread information. Schedule 1 of the Regulations specifies the information and documents that should be kept as golden thread information and can therefore be considered as ‘relevant’ information.

The Government is clear that accountable persons need to take greater ownership of their responsibilities, in line with the recommendations of Dame Judith Hackitt, and we expect them to make informed decisions on the information they require to manage their buildings safely. This information will support them in demonstrating this to their residents and the Building Safety Regulator.

To support industry with this, the Government is working with the Building Safety Regulator, and stakeholders, to produce more detailed guidance on the golden thread of information.

Lord Stunell further asked whether the contents of the golden thread of information would be made available to the Building Safety Regulator and how it would be made available. The Building Safety Regulator will be able to request any information or document held as part of the golden thread information to be submitted to them through their digital portal.

**Service charges**

Baroness Taylor of Stevenage raised concerns about the lack of transparency of service charges. The Leasehold and Freehold Reform Bill will require service charges to be more transparent. This means that all leaseholders will receive better information on the costs they are being charged and will be better able to scrutinise and challenge their service charge where needed. The Bill is also removing the presumption for leaseholders to pay their freeholders’ legal costs when challenging poor practice.

The Government is committed to ensuring the new regime is proportionate and does not result in unaffordable costs falling on leaseholders. The charges must be fair and proportionate. If a leaseholder believes that the costs that they are being asked to pay are unreasonable, they can challenge these costs at the First-Tier Tribunal (Property Chamber).

**Building Assessment Certificate**

Lord Stunell requested clarification about enforcement of the duty on the principal accountable person to display the building assessment certificate in a higher-risk building. The Building Safety Regulator will be responsible for enforcement of this duty. Non-compliance with certain duties under the Building Safety Act, including displaying the building assessment certificate, is a criminal offence. The Building Safety Regulator can prosecute such offences or can serve a compliance notice on the principal accountable person. Breaching a compliance notice without a reasonable excuse is also a criminal offence. We expect the Building Safety Regulator to use the full range of powers available to it, including prosecution, where that is proportionate under the Regulators’ Code.

**Sanctions on residents**

Lord Stunell requested clarification on whether there are any sanctions on residents who fail to comply with their resident obligations as set out in the Building Safety Act.

The accountable person must provide information to all residents about their obligations under the Act. If a resident does not comply with their resident obligations, the accountable person can issue a contravention notice. If a resident does not comply with this contravention notice, then the issue may be escalated to the courts who will be able to determine whether the contravention notice should be enforced.

Accountable persons will need to engage with their residents as part of their resident engagement strategy. We would, therefore, expect the accountable person to resolve any issues by speaking to residents directly, rather than by using a contravention notice in most cases.

If a resident considers that the giving of the contravention notice breaches the accountable persons duties, then the resident can make a complaint to the principal accountable person. If the matter is not resolved, then the resident can escalate the matter to the Building Safety Regulator.

**Register of accountable persons**

Baroness Taylor of Stevenage asked whether the Building Safety Regulator will keep a register of accountable persons and whether this information will be publicly available. Under the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023, the Building Safety Regulator must maintain a register of all higher-risk buildings and their accountable persons. The published Health and Safety Executive (HSE) business plan commits to publishing the register of higher-risk buildings by 31 March 2024, and the Building Safety Regulator is working to publish it as soon as possible.

**Exemptions**

Baroness Taylor of Stevenage expressed concern that accountable persons would use the exemption for sharing commercially sensitive information to avoid sharing information with their residents. I would like to take this opportunity to provide assurance that accountable persons must share commercially sensitive information if it is significant for managing building safety. If such information is not shared, the resident can raise a complaint with the principal accountable person. If the complaint is not resolved through the accountable persons’ internal complaints process, then the resident can escalate the complaint to the Building Safety Regulator. The Building Safety Regulator can act if this is deemed necessary, and this may involve serving a compliance notice on the accountable person or principal accountable person.

**Residents’ access to documents**

Baroness Taylor of Stevenage also asked whether accountable persons would provide prospective residents with the same information they provide to residents. There is not a legal requirement to do so, but if the request is proportionate, we would expect accountable persons to provide certain information on request to prospective residents.

In addition, there will be publicly available information on all higher-risk buildings through the publication of registration and key building information by the Building Safety Regulator.

**Remediation**

Baroness Taylor of Stevenage set out concerns about the progress of cladding remediation, the remediation of non-cladding related issues and the remediation of buildings which are below 11 metres in height.

The Government provided an update on the progress of cladding remediation on 16 November 2023, which set out that all residential buildings above 11 metres in England now have a pathway to fix unsafe cladding, either through a taxpayer-funded scheme or through a developer-funded scheme.

On non-cladding related issues, developers who have signed our developer remediation contract are required to take responsibility for all necessary work to address life-critical, fire-safety defects (cladding-related or not) of buildings 11 metres and over that they had a role in developing or refurbishing over the 30 years prior to 5 April 2022 in England. Separately, under the leaseholder protection provisions in the Building Safety Act, building owners and landlords are prevented from passing on historical safety remediation costs – including for non-cladding defects – to any leaseholder where they are, or are connected to, the developer.

Given the small number of buildings under 11 metres that are likely to need remediation, the Government assessment remains that extending the protections to buildings below 11 metres is neither needed nor proportionate. A fire risk assessment conducted in accordance with the PAS 9980 principles will often find that lower-cost mitigations are more appropriate in low rise buildings.

In rare cases where remediation work is required, the Government has retrospectively extended the limitation period under Section 1 of the Defective Premises Act 1972, enabling legal action against developers and contractors where works completed in the last 30 years made a dwelling “not fit for habitation”.

**Mandatory Occurrence Reporting**

Baroness Taylor of Stevenage further asked what can be considered a reportable safety occurrence that needs to be reported through the mandatory occurrence reporting system to the Building Safety Regulator, and whether the table in paragraph 208 of the impact assessment is an exhaustive list of potential reportable safety occurrences. In addition, whether a mandatory occurrence report would contain information about the mitigation steps needed to prevent a future occurrence.

Regulation 6 of the Higher Risk Buildings (Management of Safety Risks etc.) Regulations 2023 sets out that a ‘safety occurrence’ is an incident which can affect the structural integrity of a building, or leads to the spread of fire, to the extent that it meets the risk condition. The risk condition is defined in the Regulations as being met if the use of that part of the building without the incident or situation being remedied would be likely to present a risk of a significant number of deaths, or serious injury to a significant number of people. The table in paragraph 208 of the impact assessment is not exhaustive but demonstrates certain assumptions to enable an assessment of the impact of this requirement.

Regulation 6 of the Higher Risk Buildings (Management of Safety Risks etc.) Regulations 2023 also sets out the information that would have to be provided to the Building Safety Regulator. This includes a description of the measures taken to mitigate or remedy the safety occurrence.

The Government is working with the Building Safety Regulator to support industry regarding safety occurrence reporting.

Accountable persons are under ongoing duties to assess and manage building safety risks and the safety case report for a building will be used to demonstrate compliance with these obligations. Where arrangements for managing building safety risks have altered, because of a safety occurrence or for other reasons, it may be necessary that the safety case report needs to be updated and the Regulator notified.

**Enforcement and the Building Safety Regulator**

Baroness Taylor of Stevenage further asked about the enforcement process for the new regime and whether the Building Safety Regulator will have equivalent enforcement powers to the Health and Safety Executive.

The Building Safety Regulator already has strong enforcement powers regarding their new duties as the building control authority for higher-risk building work and will have strong enforcement powers regarding the management of occupied higher-risk buildings.

The Building Safety Regulator can issue compliance notices or stop notices regarding higher-risk building work. We have also amended Section 36 of the Building Act 1984 to extend the time limit to take action to correct non-compliant work under this section to ten years and the Building Safety Regulator, as a building control authority, has powers under this section. For example, if the Building Safety Regulator inspected a building during its construction period and found that works carried out contravene regulations and could potentially cause a risk of serious harm, it could issue a stop notice that would cease all works on-site immediately until remedial action has been taken. For a less serious (non-life threatening) breaches of building regulations, the Building Safety Regulator could issue a compliance notice setting out that certain remedial action must be carried out by a prescribed date. Non-compliance in both instances can lead to an unlimited fine or a custodial sentence of up to two years.

For occupied buildings, non-compliance with certain accountable person duties, for example, registration and certification of the higher-risk building, is a criminal offence, and the Building Safety Regulator can prosecute such offences. Elsewhere, if an accountable person has not complied with their statutory duties, such as managing risk through their safety case, the Building Safety Regulator can serve compliance notices on those in breach. Failure to comply with a compliance notice or failure to supply information is a criminal offence, with a maximum penalty of up to two years in prison and an unlimited fine. The Building Safety Regulator will also have the power to enter premises and to require the production of documents.

**Progress on implementing the regime**

Lord Stunell asked whether these Regulations were the final statutory instrument required to enable the implementation of the higher-risk regime. As I said at the time following approval of these Regulations by Parliament, the regime for occupied higher-risk buildings will come into force once these Regulations and the related commencement Regulations have been signed by the Minister. The regime for higher-risk buildings in design and construction has been in operation since 1st October 2023.

Lord Stunell also asked whether the Government had weakened the new regime. Lord Stunell cited the gap following Peter Baker’s resignation as Chief Inspector of Buildings and the amendment to Levelling Up and Regeneration Act 2023 to allow the Secretary of State to replace the Health and Safety Executive with a new body as the Building Safety Regulator.

The Government remains fully committed to improving building safety and ensuring residents are and feel safe in their homes and the Building Safety Act and associated regulations deliver on the recommendations made by Dame Judith Hackitt. The HSE has a strong identity and regulatory background focussing on safety – that is why it was well positioned in 2020 to deliver the Building Safety Regulator quickly. The Chief Inspector of Buildings leads the work of the Building Safety Regulator within the HSE, but Chief Inspector of Buildings is not the Regulator. The work of the Building Safety Regulator continued during the period between the resignation of Peter Baker as the Chief Inspector of Buildings and the appointment of his successor. In the interim period Philip White (the HSE’s Director of Regulation) took over the responsibilities as Chief Inspector of Buildings and the timeline for the implementation of the new regime, which we expect to be fully operational by April 2024 was not affected. The Building Safety Regulator has been fully resourced to deliver its functions and has successfully delivered the initial requirements, including overseeing the registration of over 11,000 higher-risk buildings.

The evidence heard through the Grenfell Tower Inquiry has made it clear that Government must develop an effective role as system steward for the built environment. This may require longer-term reform which could include consideration of building-related regulatory functions currently spread across multiple regulators and arms-length bodies. The Government considers it necessary to create the flexibility to move the Building Safety Regulator to another existing, or new, body in the future, but would look at any options very carefully and consider the recommendations from the Grenfell Tower Inquiry before confirming the best way forward. Establishing this flexibility does not affect delivery of the Building Safety Regulator’s important work.

**Insurance and mortgages**

Baroness Taylor of Stevenage set out that there are still unresolved issues about insurance and mortgages on buildings with building safety issues.

Over three quarters of mortgage lending within England is now covered by the commitment to consider mortgage applications on properties in buildings in England of 11 metres or 5 storeys and above in height with building safety issues. Lenders no longer require a building to have completed remediation to offer a mortgage. If a building is in one of the remediation schemes (whether Government or developer funded), or the leaseholders are covered by the leaseholder protections within the Building Safety Act, nine lenders will now consider mortgage lending.

The Leasehold and Freehold Reform Bill will ban building insurance commissions for freeholders and managing agents and replace these with transparent handling fees to stop leaseholders being charged excessive and opaque commissions. Separately, on 29 September 2023, the FCA published their changes for giving leaseholders rights under their Fair Value rules and requiring the disclosure of key policy information. The changes will mean that insurers and brokers will be required to act in leaseholders’ best interests and will also have to ensure that the policies they provide offer fair value to leaseholders. These measures came into force on 31 December 2023.

**Review of regime**

Baroness Taylor of Stevenage also asked whether these regulations would be subject to review to ensure they are working as intended. As required by the Building Safety Act, the Secretary of State must appoint an independent person to review the effectiveness of the Building Safety Regulator and the regime as whole, including for higher-risk buildings, every five years (the first appointment must be made by 28 April 2027); the Building Safety Regulator has a statutory duty to keep the higher-risk regime under review.

I hope you find this letter helpful and I once again repeat that I found the discussion constructive and I am grateful for all the points raised. I will place a copy in the House Library.



**LORD GASCOIGNE**

Lord Stunell and Baroness Taylor of Stevenage

House of Lords